

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3283 of 2006
To
FIRST APPEAL No. 3297 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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STATE OF GUJARAT & 1 - Appellant(s)

Versus

THAKORBHAI PARSOTTAMDAS & 1 - Defendant(s)

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Appearance :

FIRST APPEAL NOS.3283 to 3287 of 2006 : MS REETA CHANDARANA, AGP;

FIRST APPEAL Nos.3288 to 3292 of 2006 : MR APURVA DAVE, AGP;

FIRST APPEAL Nos.3293 to 3297 of 2006 : MR KAMLESH PANDIT, AGP for
the appellant State & its functionaries.

MR AJ PATEL for respondents-claimants.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 10/07/2007

COMMON ORAL JUDGMENT

1. The State of Gujarat, through the Deputy
Secretary, Narmada W.S. & W.R. Department, and the

Special Land Acquisition Officer, Narmada Project, appellants, have filed these First Appeals under Sec.54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act') challenging the common judgment and award dated 31st Dec.2004 passed by the learned Civil Judge (SD), Bharuch in Land Reference Case Nos.159 to 173 of 1996, the main case being Land Reference Case No.159 of 1996. By the impugned judgment, the learned Judge was pleased to partly allow the reference applications with proportionate costs. By the said judgment and order, the learned Judge has awarded Rs.1598/- per Are for the acquired lands.

1.1 It may be noted that the Land Acquisition Officer has awarded only Rs.390/-. So the learned Judge has awarded Rs.1208/- per Are, i.e. Rs.1598/- minus Rs.390/- = Rs.1208/- per Are. The learned Judge has held that the claimants are also entitled to get increase at the rate of 12% per annum from the date of publication of notification under Sec.4 of the Act i.e. From 16th June 1992 to the date of award passed by the Special Land Acquisition Officer, i.e. 30th April 1994 as provided under Sec.23(1-A) of the Act and further that the claimants are entitled to 30% solatium and running interest at the rate of 9% per annum for the period of one year from the date of taking over the possession of the acquired lands and thereafter at the rate of 15% per annum on aggregated amount i.e. Additional award, solatium and 12% increase under Sec.23(1-A) of the Act till the

entire amount is fully paid or deposited.

2. I have heard Ms.Reeta Chandarana, Mr.Apurva Dave and Mr.Kalpesh Pandit, learned AGPs appearing on behalf of the appellants in this behalf. I have also heard Mr.A.J.Patel, learned Sr.Counsel appearing for respondents-claimants.

3. The learned AGPs for the appellants have stated that the lands admeasuring 23352 sq.mtrs. of village Gajera, District Bharuch, were proposed to be acquired for the public purpose of Narmada Dam by the State Government. The notification under Sec.4 of the Act, for the said purpose was issued on 16th June 1992. Thereafter, the necessary inquiry was conducted under Sec.5(A)2 of the Act was conducted and on the basis of the report submitted by the Special Land Acquisition Officer, notification under Sec.6 of the Act was published in the Official Gazette on 24th June 1993. Thereafter, after following due procedure under the Act, ultimately, the Special Land Acquisition Officer awarded Rs.390/- per Are, i.e. Rs.3.90 per sq.mtr. for the acquired land.

4. As the claimants were being aggrieved and dissatisfied with the said award, they filed the Reference Cases before the District Court, Bharuch, which were numbered as Land Reference Case Nos.159 to 173 of 1996 in this behalf. Along with the judgment, the Schedule has also been produced indicating the Land Reference No., Name of claimant, Block No., area

of land, market value of land at Rs.1600/- 30% solatium, 12% additional amount from 16.6.1992 to 30.4.1994, compensation paid by the Land Acquisition Officer and Compensation to be paid.

5. Before the District Court, the claimants prayed for Rs.100/- per sq.mtr. i.e. Rs.10,000/- per Are. However, the learned Judge has awarded in all, Rs.1598/- per Are i.e. Rs.15.98 per Sq.mtr. which can be rounded off to Rs.16/- per sq.mtr. It may be noted that the Special Land Acquisition Officer has awarded only Rs.3.90 per sq.mtr., but the learned Judge has awarded Rs.100/- per sq.mtr. as mentioned hereinabove.

6. Mr.A.J.Patel, learned Sr.Counsel for the claimants has assailed the judgment and order of the learned District Judge on several aspects. Before the trial Court, the claimants have based their claim only on the previous award. The claimant Ravjibhai Nagjibhai Patel has deposed at Exh.14 and contended that their lands were acquired in common land acquisition case and their village is situated in the sim of village Gajera which were adjacent to the sim of village Uchhad, meaning thereby the lands of both the villages were having common boundary, and therefore, the award passed in main Land Reference Case No.872 of 1987 is relevant for the determination of the present land reference cases. He has further deposed regarding various judgments of the Hon'ble Apex Court as well as of this Court. It is contended

that in the previous award the value of the acquired lands was fixed at Rs.7.10 per sq.mtr. and the notification under Sec.4 of the Act in the previous award was published on 8.12.1983 while the notification under Sec.4 of the Act in the present reference cases was published on 16th June 1992 and therefore, they are also entitled for the price rise at the rate of 12% and not at the rate of 10%. It is further contended that the price rise is required to be given at the average rate after consolidating the price rise at the rate of 10% and 12%. He has further deposed as to the consequential reliefs which requires to be given under the provisions of the Act and worked out the value of the lands acquired at the rate of Rs.16.55 per sq.mtr. He has been cross examined by the opponent and admitted that he has not obtained and produced his price testimony report to show that the lands of village Uchhad and lands of village Gajera were of the same fertility. He has denied as to the sale instances of lands of his village and further denied that he has not produced any sale deed which was of low price.

7. From the record, the learned Judge has come to the conclusion that village Uchhad and village Gajera are adjacent to each other having common revenue boundary. So far as village Umra is concerned, it has not been mentioned as adjacent village in copy Exh.19. Moreover, the opponents have not put any suggestion during the cross examination of the claimant that village Umra is adjacent or having

common boundary with the revenue limit of village Gajera. No one has deposed on behalf of the opponents. The learned Judge, in view of the evidence recorded before the trial Court has come to the conclusion that the previous award passed for the lands acquired of village Umra is not relevant as the opponents failed to establish that village Gajera and village Umra are adjacent or lands acquired in both the cases were of the same vicinity and therefore, the previous award Exh.19 was not required to be considered as it is irrelevant for the purpose of determination of the value of the lands under the present reference cases.

8. The learned Judge has further held that so far as the previous award is concerned, it was passed by the learned Assistant Judge, Bharuch and awarded Rs.710/- per Are. It has been further held that the date of notification under Sec.4 of the Act in previous award was 4th Dec.1983 while the notification under Sec.4 of the Act in the present reference cases was 16th June 1992. In view of the same, the notification under Sec.4 of the Act in the present land reference cases is later by eight years and six months and therefore, relying upon previous award Exh.12 the claimants are also entitled for the price rise at the rate of 10% per annum and in all they are entitled for 85% towards the price rise meaning thereby the value of the acquired lands comes to Rs.1313/- per Are on the date of notification under Sec.4 of the Act under the present reference cases.

9. The learned Judge, thereafter considered the judgments of the Hon'ble Supreme Court and of this Court and also the previous award which has been produced at Exh.12 in relation to village Uchhad. After referring to Exh.12, it has been held that there is a gap of more than three years between the notification under Sec.4 of the present land reference cases and the previous award Exh.12. Therefore, if the price rise at the rate of 10% progressively is granted, it would be just and adequate. In view of the same, the learned Judge has awarded Rs.1598/- per Are for the acquired lands.

10. The learned AGPs submitted that on behalf of the acquiring body, no witness has been examined. Mr.A.J.Patel, learned Sr.Counsel appearing for the claimants submitted that this Court has examined the paper book in detail and considered the oral as well as documentary evidence adduced before the Reference Court.

11. From the record of the case, it is evident that the claimants never claimed enhanced compensation either on the basis of yield or on the basis of comparable sale instances. What was relied upon by the claimants was previous award of the Reference Court relating to the lands of village Uchhad. As observed earlier, the assertion made by the witness for claimants that the lands of village Uchhad were similar to the lands acquired in the instant case has

almost gone unchallenged. The fact that the boundaries of two villages are adjoining to each other is not in dispute. It is well settled that previous award of the Reference Court relating to a village which has attained finality can be considered to be a good piece of evidence for the purpose of determining market value of similar lands acquired subsequently from the adjoining village. Therefore, this Court is of the opinion that no error was committed by the Reference Court in placing reliance on the previous award of the Reference Court for the purpose of determining market value of the lands acquired in the instant case.

12. On re-appreciation of the evidence adduced before the Reference Court, this Court is of the opinion that the finding recorded by the Reference Court that the claimants were entitled to enhanced compensation on the basis of previous award of the Reference Court relating to the lands of village Uchhad cannot be interfered with and deserves to be upheld. However, it is agreed by the learned Counsel for the claimants that the claimants would be entitled to reasonable rise in price of lands at the rate of Rs.0.71 ps. per sq.mtr. for 9 years and if calculation is made on this basis, the claimants in all would be entitled to Rs.9/- and not Rs.15.98/- per sq.mtr. as calculated by the Reference Court, which can be rounded off to Rs.16/- per sq.mtr. Thus, the finding recorded by the Reference Court will have to be modified by holding that the claimants are

entitled to compensation of Rs. 6.30 per sq.mtr. which can be rounded off to Rs.7/- per sq.mtr. and in all, the total compensation will of Rs.13.50 per sq.mtr.

13. For the foregoing reasons, all these appeals are partly succeed. The common judgment and award dated 31st Dec.2004 rendered by the learned Civil Judge (SD), Bharuch in Land Acquisition Reference Case Nos. 159 to 173 of 1996 awarding compensation to the claimants in all at the rate of Rs.1598/- per sq.mtr. for their acquired lands, is hereby modified and it is held that the claimants in all would be entitled to compensation at the rate of Rs.13.50 per sq.mtr. The other benefits granted to the claimants by the impugned award are not interfered with at all and are hereby confirmed. The appeals are allowed to the extent indicated hereinabove. There shall be no order as to costs. The Registry is directed to draw the decree in terms of this judgment immediately.

(K.M.Mehta, J.)

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